

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Senior Airman JOSEPH V. DONNELL  
United States Air Force**

**ACM 35622**

**24 September 2004**

Sentence adjudged 30 April 2003 by GCM convened at Langley Air Force Base, Virginia. Military Judge: Kevin P. Koehler (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea and Major Rachel E. Vanlandingham.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Spencer R. Fisher (legal intern).

Before

**MALLOY, GENT, and JOHNSON  
Appellate Military Judges**

**OPINION OF THE COURT**

JOHNSON, Judge:

The appellant was tried at a general court-martial convened at Langley Air Force Base, Virginia, on 30 April 2003. In accordance with his pleas, the military judge found him guilty of divers uses of marijuana, ecstasy, and cocaine, and divers distributions of marijuana, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. He was sentenced to a bad-conduct discharge, confinement for 13 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. Consistent with a pretrial agreement, the convening authority approved the bad-conduct discharge, confinement for 12 months, forfeiture of all pay and allowances, and reduction to E-1.

The appellant raises one issue. He claims the convening authority, Commander of the Ninth Air Force Provisional (9 AF(P)/CC), was without jurisdiction to try the appellant and to take action on this case because he was not authorized to convene general courts-martial. We disagree and affirm.

Headquarters Ninth Air Force Provisional (9 AF(P)) was activated by direction of the Commander of Air Combat Command on 1 October 2001, pursuant to Special Order GB-57, dated 25 September 2001. 9 AF(P)/CC was designated by the Secretary of the Air Force to convene general courts-martial pursuant to Article 22(a)(8), UCMJ, 10 U.S.C. § 822(a)(8), effective 15 October 2001, pursuant to Special Order GA-001, dated 17 October 2001. On 8 October 2002, the Secretary of the Air Force promulgated Special Order GA-001, which authorized specified commanders to convene courts-martial. The order does not mention 9 AF(P).

On 27 February 2003, 9 AF(P)/CC referred the charge and specifications in the case sub judice to a general court-martial. On 26 June 2003, the Secretary of the Air Force signed a memorandum clarifying his intent in the 8 October 2002 order that did not include 9AF(P). He specifically stated that he did not withdraw general court-martial convening authority from 9 AF(P)/CC on 8 October 2002. On 3 July 2003, 9 AF(P)/CC took action in this case. On 18 July 2003, 9 AF(P) was inactivated.

The appellant contends that the Secretary of the Air Force withdrew general court-martial convening authority from 9 AF(P)/CC in his 8 October 2002 Special Order, when he omitted 9AF(P) from the list of general court-martial convening authorities. This argument fails. 9AF(P)/CC always had statutory authority to convene general courts-martial pursuant to Article 22(a)(7), UCMJ, 10 U.S.C. § 822(a)(7). *United States v. Hardy*, ACM 35371 (A.F. Ct. Crim. App. 27 Jul 2004). Furthermore, the omission in the 2002 Special Order did not apply to the 9AF(P)/CC because he had been granted secretarial authority by virtue of the 2001 Special Order. Finally, the Secretary of the Air Force never intended to withdraw authority from 9AF(P)/CC, despite the omission in the 2002 Special Order, as clarified in his 26 June 2003 memorandum.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court